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IN THE

Supreme Court of the United States

OCTOBER TERM—1943

No. 278.

COMPANIA TRASATLANTICA (formerly Compania
Trasatlantica Administrada por el Estado),

Petitioner,
against

S.S. MANUEL ARNUS, her engines, etc. UNITED
STATES OF AMERICA, claimant appearing specially
and TODD-GALVESTON DRY DOCKS, INC.,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT
THEREOF**

GEO. WHITEFIELD BETTS, JR.,
Counsel for Petitioner.

WILLIAM LOGAN, JR.,
HELEN F. TUOHY,
Of Counsel.



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**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Petitioner herein prays for a writ of certiorari to the
United States Circuit Court of Appeals for the Fifth Cir-
cuit to review a judgment of that Court, entered March
28th, 1944, affirming a final decree in admiralty of the
United States District Court for the Southern District of
Texas, Galveston Division, in favor of respondents.

Jurisdiction

The date of the judgment of the Circuit Court is March 28th, 1944. On June 23rd, 1944, Hon. ROBERT H. JACKSON signed an order extending the time for filing this petition to July 28, 1944. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13th, 1925 (28 U. S. C. A. 347a) and under General Rule 38 of this Court, Section 5, subdivision b.

Statement

Compania Trasatlantica, a Spanish corporation, was the owner of and in possession of the S.S. *Manuel Arnus* for many years. On March 27th, 1938, the vessel was illegally seized by force and ruse by naval officers of the Mexican Government while the vessel was anchored in the bay at Havana, Cuba, and taken to Mexico without the consent or approval of the owner and contrary to its express protest (p. 43). It was seized by these naval officers also in violation of judgments of seizure of the Cuban courts against the *Manuel Arnus*, for supplies furnished by certain ship chandlers, and taken from Cuba without Customs House clearance (pp. 42, 43). On September 23rd, 1939, ownership of the vessel was vested in Compania Trasatlantica Administrada por el Estado (a company administered by the Spanish State) by decree of the Spanish Government under its requisition law (p. 110).

While the Mexican Government was still in possession of the vessel on March 20th, 1941, the Director General of Mexican Marine of the Mexican Government issued a purported declaration of abandonment (pp. 46, 47). On October 17th, 1941, after extended negotiations petitioner and

the Mexican Government entered into an agreement for the return of the *Manuel Arnus* to petitioner upon payment of certain port charges, etc. (pp. 49, 60). The Mexican Government endeavored to modify this agreement, but petitioner refused to permit it to be modified. While discussions were still in progress between petitioner and the Mexican Government, on November 24th, 1942, the vessel was towed from Vera Cruz, Mexico, to Galveston, Texas. Apparently, the Mexican Government had the vessel towed to Galveston as Hon. Sumner Wells in his letter of March 2nd, 1943, to the Spanish Ambassador agreed to reimburse the Mexican Government for salvage of the vessel and its transfer to the United States (p. 19).

On July 30th, 1942, the Supreme Court of Mexico reversed a decision in favor of seventy members of the crew for wages up to April 15th, 1939. It recognized Compania Trasatlantica, S. A., as the owner of the vessel.

On February 4th and 11th, 1943, the United States Government was advised that petitioner was the owner of the vessel and that the vessel had been taken by the Government of Mexico from petitioner unlawfully (pp. 106-109). Notwithstanding this, on March 3rd, 1943, the United States Government accepted from the Mexican Ambassador to the United States what purported to be a bill of sale of the vessel, reciting that title in the United States was to be effective as of September 24th, 1942, which was a condition imposed by the United States (pp. 19, 23).

On the evening of March 11th, 1943, after the libel was filed the United States Government requisitioned all title and possession of the vessel, other than the rights and interests already acquired by it and purporting to be effective as of March 5th, 1943, under the Idle Vessels Act, Public Law 101 of June 6th, 1941 (Title 46, U. S. C. A. note

preceding § 1101) (p. 10). Petitioner contended below that this requisition was void and counsel for the United States stated that it did not assert or rely upon any rights acquired thereunder. On November 20th, 1943, the administration of the Compania Trasatlantica by the Spanish State terminated. Petitioner is informed that at the time of making this application, the S.S. *Manuel Arnus* is lying idle at Galveston, Texas, within the territorial jurisdiction of the District Court; and that efforts to repair her have been practically abandoned.

Petitioner never abandoned ownership of the vessel at any time and continuously asserted its legal right thereto.

Proceedings and Decisions of the Lower Courts

On March 11th, 1943, petitioner filed a libel *in personam* and *in rem* to recover possession of the S.S. *Manuel Arnus* from the respondent Todd-Galveston Dry Docks, Inc., hereinafter referred to as "Todd." The United States of America appeared specially on April 5th, 1943, and filed a petition to dismiss the libel summarily, alleging that it was the owner and entitled to possession of the steamship and attached certain documents thereto. Petitioner filed an answer to this petition, denying ownership and possession of the United States. Upon the request of the Government petitioner consented to have the matter summarily decided, on condition that the United States would admit the truth of the facts submitted by the petitioner without legal evidentiary proof thereof, and requested that the petition be dismissed on the facts and the law (p. 59). On April 15th, 1943, the District Court rendered its summary decision dismissing the libel for lack of jurisdiction and a decree was entered on April 26th, 1943 (*Manuel Arnus*, 51 F. Supp. 577).

Thereafter, respondent Todd on May 15th, 1943, filed its answer and moved that the libel be dismissed as to it. An order granting respondent Todd's motion was duly filed on June 14th, 1943. On July 1st, 1943, an order was entered in the District Court allowing an appeal. Petitioner filed a bond for costs as required in the order, but no supersedeas bond was filed, the Court declining to stay the execution of the final decree for a sufficient length of time for the petitioner to communicate with Spain and to arrange for the necessary indemnity for a supersedeas bond. Communication with Spain at that time was subject to great delays.

The District Court's findings of fact and conclusions of law are printed at pages 118-120 of the record and reported at 1943 A. M. C. 808 (51 F. Supp. 577). There was no opinion in addition to the findings of fact and conclusions of law as prepared by the Trial Judge under Admiralty Rule 46 $\frac{1}{2}$. The District Court found as a fact that the United States of America began negotiations with the Republic of Mexico for the purchase of the steamship on September 24th, 1942, and that pursuant to such negotiations the steamship was brought to the docks of Todd at Galveston, Texas, and also found as a fact that on March 3rd, 1943, the steamship was purchased by the United States from the Republic of Mexico and a bill of sale executed transferring title to the United States of America as of September 24th, 1942. Under its conclusions of law the District Court held that at the time of the filing of the libel herein on March 11th, 1943, the United States was in possession of the steamship and claiming title thereto and that at that time the vessel was at the docks of Todd at Galveston, Texas, and under such circumstances the vessel was not amenable to process of this Court, citing *United States v. Jardine*, 81 F. (2d) 746, *The Western*

Maid, 257 U. S. 419, and 46 U. S. C. A. Section 741, *et seq.* The District Court also concluded as a matter of law that if the facts were as set forth by petitioner the Court might not inquire into and determine the validity of the proceedings under which it was claimed by the United States of America that the Republic of Mexico acquired title to the steamship, citing *Underhill v. Hernandez*, 168 U. S. 250 and similar cases.

The opinion of the Circuit Court of Appeals is printed at pages 134-137 of the record and is reported at 141 F. (2d) 585 under the title of *Manuel Arnus*.

Upon the argument of the appeal respondent United States of America moved to dismiss the appeal on the ground that the case was moot because of the release of the *Manuel Arnus* in the Court below and there was no subject matter upon which the judgment of the Circuit Court could operate, that neither the Court below nor the Circuit Court had such jurisdiction *in rem* as would support a decree awarding possession of the vessel and that the appeal could not proceed against Todd which had only a status as bailee which ended upon release of the vessel.

The Circuit Court ruled that petitioner could not claim that the *in rem* jurisdiction persisted after the surrender of the vessel. It also held that the claim for damages against Todd *in personam* was merely a formal claim and incidental to the claim of possession. It held that the vessel was in the possession of the United States of America under a claim of ownership, that custody thereto had been delivered to Todd for a limited, temporary and special purpose and under such circumstances as did not, in law, divest the possession of the United States and that the custody of Todd no longer existed. It found that the possession of the vessel was in the United States and therefore

the issue of right of possession as between the petitioner and Todd presented nothing of substance for determination. It also found that the custody of Todd was the possession of the United States and that this ship being in the public service of the United States was immune from seizure and therefore dismissed the appeal *in rem* and affirmed the judgment of dismissal against Todd.

Statute Involved

The statute involved is the Suits in Admiralty Act, 46 U. S. C. A., Section 741, *et seq.*, the pertinent provision of the Act being as follows:

“Exemption of United States vessels and cargoes from arrest or seizure.

No vessel owned by the United States * * * or in the possession of the United States * * * shall * * * be subject to arrest or seizure * * *.”

Questions Presented

1. Where a supersedeas bond is not filed following dismissal of a libel *in rem* and the U. S. Marshal subsequently releases custody of the vessel do the District Court and the Circuit Court of Appeals lose jurisdiction where the vessel is not removed from the territorial jurisdiction of the Courts?
2. Where a vessel owned by a Spanish corporation is unlawfully and illegally seized by the Mexican Government in waters extra-territorial to Mexico and the United States of America and taken to Mexico and while there a decree of Spain vests title in Compania Trasatlantica Administrada por el Estado, a company administered by the Span-

ish State, and where subsequently the vessel, while her owner is excluded therefrom by the Mexican Government, is declared abandoned by the Mexican Government and sold by it to the United States of America and brought into the territorial waters of the United States of America without the authority or consent of its owner and a possessory libel *in personam* and *in rem* is filed by Compania Trasatlantica Administrada por el Estado against Todd-Galveston Dry Docks Inc. and the vessel, and the United States appearing specially files a petition to dismiss the libel merely alleging title and right to possession, which allegations are denied by libellant, can the lower courts summarily refuse jurisdiction on the principle of sovereign immunity of the United States?

3. Does the principle of sovereign immunity apply where the proof is insufficient to establish that the United States is the legal owner or in possession of a vessel?

4. Is the mere claim of the United States of ownership or right to possession of a vessel sufficient under the principle of sovereign immunity to justify a refusal of jurisdiction?

5. Is the mere claim of the United States of ownership or right to possession of a vessel sufficient under 46 U. S. C. A., Section 741, to justify refusal of jurisdiction?

6. May a Federal Court summarily dismiss a possessory libel for lack of jurisdiction under 46 U. S. C. A., Section 741, where the proof is insufficient to establish that the United States is the legal owner or in possession of the vessel?

7. Where a libel is filed *in rem* for possession and *in personam* for damages does the Court lose jurisdiction

of the libel *in personam* upon the dismissal of the libel *in rem*?

8. Where a possessory libel is brought against the bailee is the Government of the United States as bailor entitled to a dismissal of the libel on the principle of sovereign immunity where the bailment agreement is not before the Court?

9. Where the facts show that a bailee is in actual possession of a vessel and do not show the agreement between the bailee and bailor can a Court conclude as a matter of law that the bailor was in possession?

10. Where a District Court's conclusion of law on the merits is not material to its decision because it held it had no jurisdiction is it proper for a Circuit Court of Appeals to refuse to strike out this conclusion upon affirmance of the lower Court's decree.

Specifications of Error to Be Urged

The Circuit Court of Appeals erred:

1. In holding that the Court lost jurisdiction *in rem* because no supercedeas bond was filed.
2. In holding that the claim for damages was merely incidental to the claim for possession.
3. In holding that the claim against Todd was not substantial, but merely formal.
4. In holding that the *Manuel Arnus* was in the possession of the United States under a claim of ownership.

5. In holding that the custody of Todd did not in law divest the possession of the United States.
6. In holding that the record showed that the custody of the vessel had been delivered to Todd for limited, temporary and special purposes.
7. In holding that the issue of right of possession as between petitioner and Todd presents nothing of substance for determination.
8. In holding that the United States of America being in possession of the vessel the District Judge was right in dismissing the libel for want of jurisdiction and that the rule of the *Jardine* case applies to the facts of this case.
9. In holding that the custody of Todd was the possession of the United States.
10. In holding that the principle that a ship in the public service of the United States is immune from seizure applies to this case.
11. In dismissing the libel *in rem*.
12. In affirming the judgment of dismissal *in personam* against Todd.
13. In not directing that the *Manuel Arnus* be delivered to petitioner.
14. In failing to hold that the District Court was in error in dismissing the libel for want of jurisdiction over the vessel and in holding that the vessel was not amenable to process of the District Court.

15. In failing to hold that the *Manuel Arnus* should be delivered to petitioner and in holding that the order of arrest and the attachment of the vessel by the United States Marshal be vacated.

16. In failing to hold that the District Court was in error in finding that at the time of the filing of the libel the United States of America was in possession of the vessel and claiming title thereto, and that petitioner may not inquire into the validity of the title and possession of the United States of America to the S.S. *Manuel Arnus*.

17. In failing to hold that the District Court erred in holding that it might not inquire into the validity of the proceedings under which it was claimed by the United States of America that the Republic of Mexico acquired title to the vessel, or into the validity of the proceedings taken in Mexico declaring the vessel abandoned and in not holding that under Mexican law the proceedings for declaration of abandonment of the vessel were invalid, gave no title to the vessel and that there was no abandonment of the vessel in Mexico.

18. In failing to hold that the vessel was taken from the possession of petitioner by Mexican naval authorities in Cuba and brought by them to Vera Cruz, Mexico, and that the Mexican Government wrongfully retained possession of the vessel after it was taken into Mexico and refused to allow petition to have possession of the vessel and negligently allowed the vessel to go aground and be severely damaged.

19. In failing to hold that the attempted requisition of the vessel by the United States was invalid and of no effect.

20. In failing to hold that the District Court erred in decreeing that the process *in personam* by which Todd was required to appear in that Court should be held for naught and vacated.

Reasons for Granting the Writ

1. The decision of the Court below in granting respondent's motion to dismiss the appeal for lack of jurisdiction because no supersedeas bond had been filed, where the vessel remained in the territorial jurisdiction of the Court, is in conflict with the decision of this Court in *The Rio Grande*, 23 Wall. 458.

2. The decision of the Court below in refusing jurisdiction on the principle of sovereign immunity of the United States without proof of ownership or possession of the vessel is a denial of due process of law.

3. Where the Court below denies jurisdiction on the principle of sovereign immunity of the United States in a suit in admiralty in which a possessory libel is filed by a foreign sovereign also claiming ownership and right to possession, there is presented a novel question and one of general importance which should be decided by this Court.

4. The Court below in holding that it lost jurisdiction of the libel *in personam* upon dismissal of the libel *in rem* rendered a decision in conflict with a decision of the Circuit Court of Appeals of the Third Circuit in the case of *The Denny*, 127 F. (2d) 404.

5. The decision of the Court below in holding that the custody of the vessel by Todd for a limited, temporary

and special purpose did not divest possession of the United States is in conflict with the decision of this Court in *The Davis*, 10 Wall. 15.

6. The decision of the Court below in granting a petition of the United States to dismiss a libel *in personam* and *in rem* filed in a possessory suit for possession of a vessel in the physical possession of a third party, upon a mere suggestion of ownership and right to possession of the United States is in conflict with *United States v. Lee*, 106 U. S. 196.

A true copy of the affidavit of H. C. Hughes, duly sworn to the 14th of July, 1944 is hereto attached in support of this petition.

WHEREFORE your petitioner referring to the annexed brief in support of the foregoing reasons for review, respectfully prays that this Honorable Court issue a writ of certiorari directing the United States Circuit Court of Appeals for the Fifth Circuit to issue a full and complete transcript of the record herein to the end that the said cause may be reviewed and determined by this Court as provided by law and that the decree of the Circuit Court of Appeals may be reversed and that your petitioner may have such other and further relief as to this Honorable Court may seem just.

COMPANIA TRASATLANTICA,

By GEO. WHITEFIELD BETTS, JR.,
Counsel for Petitioner.

Dated: July 13th, 1944.

IN THE
SUPREME COURT OF THE UNITED STATES

No.

COMPANIA TRASATLANTICA, ADMINISTRADA
POR EL ESTADO,

Appellant,

vs.

UNITED STATES OF AMERICA, claimant of steamship
“MANUEL ARNUS,” and TODD-GALVESTON DRY
DOCKS, INC.,

Appellees.

State of Texas {
County of Galveston }

On this day personally appeared before me H. C. HUGHES, Attorney at Law and Proctor in Admiralty, of Galveston, Texas, and being first duly sworn on oath deposes and says that the S.S. *Manuel Arnus*, a ship of Spanish Registry, was brought into Galveston from a port in Mexico in tow of two tugs; and about which vessel a suit with reference to the title and possession of same is now pending in this Court on a petition for certiorari from the United States Circuit Court of Appeals for the Fifth Circuit; that said vessel was moored alongside of the wharves of the Todd-Galveston Dry Docks Inc., and was kept at said wharves for many months; that while said vessel was moored at said wharves a suit was filed by Com-

pania Trasatlantica, Administrada Por El Estado in the United States District Court at Galveston for title and possession of same against the Todd-Galveston Dry Docks, Inc.; that said vessel was taken into possession by the United States Marshal and was later released when the suit was dismissed upon petition of the United States; that said vessel has at all times since the dismissal of said cause and the release of said vessel by the Marshal been located in the harbor of Galveston, Texas, the exact location being Pier 29, Galveston Wharf Company, having been moved there from the Todd-Galveston Dry Docks, Inc. wharves several months ago. There are watchmen from the Galveston Wharf Company police on board said vessel who are watching same for and on behalf of the War Shipping Administration. No repairs of any kind have ever been made upon said vessel after it left Todd-Galveston Dry Docks Inc., where some of the damaged machinery was taken out.

H. C. HUGHES

Sworn to and subscribed before me this 14th day of July, 1944.

JANE CROWE,
Jane Crowe
Notary Public in and for Galveston
County, Texas.

(Seal)